

December 15, 2023

VIA ECF

The Honorable Judge Margo K. Brodie
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Courtroom 6F
Brooklyn, NY 11201

Magistrate Judge Joseph A. Marutollo
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Courtroom N324
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*,
No. 1:05-MD-1720 (MKB)(JAM)

Your Honors:

On Friday, December 8, 2023, the Court issued an Order directing Rule 23(b)(3) Class Counsel (“Class Counsel”) to file a letter by today to provide updates regarding three matters raised in Class Counsel’s Status Report regarding third parties. *See* 12/8/23 Text-Only Order.

Class Counsel here provides the required updates as well as apprising the Court of two new issues that have arisen since the December 8, 2023 Monthly Report Regarding Third-Party Entities (ECF 9026) (“12/8/23 Report”).

First, Class Counsel can report that issues related to false and/or misleading emails by J.E. Lawrence and Company, LLC (“J.E. Lawrence”) are in the process of being corrected. J.E. Lawrence has been responsive to Class Counsel and the following steps have been taken. First, J.E. Lawrence has prepared an email to go to all 18,600 email addresses that received the false and/or misleading sales solicitations. The corrective disclosure email, reviewed by Class Counsel before being sent, addresses each of the statements that were misleading and provides class members with the opportunity to cancel their contracts. Representatives of J.E. Lawrence reported that the email servicing company is limited in the number of emails that can be sent per day. As such, J.E. Lawrence plans to ask the company to send the maximum number each day until all 18,600 addresses receive the correction. As of today, more than 4,900 emails have been sent. Further, J.E. Lawrence reports that it will send to all independent contractors and referral partners a “best practices” guide. This guide was reviewed by Class Counsel and it appears to stress the importance of truthful and accurate information being shared with sales prospects and includes all required disclaimers. Based on the representations made by J.E. Lawrence, Class Counsel believes no further action regarding the company is currently warranted and will provide an additional update in its next scheduled report due January 12, 2024.

Second, the Court directed Class Counsel to update it regarding two other issues raised in the 12/8/23 Report. As to the first issue regarding a law firm, the law firm provided Class Counsel with

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an ethics opinion on December 12, 2023. Class Counsel is in the process of reviewing the opinion and is looking into the retention of an expert. Several of the opinions provided by the law firm do not seem supported by the factual situation present here. The parties are continuing discussions and may present the dispute to the Court in the near future, should resolution not be reached.

The second issue is related to a claims-filing and claims-buying company. As reported, Class Counsel sent a letter to the company and had a conference call on December 7, 2023. The calculator related to claims filing has been removed and the other changes were made, as requested. At this time, no other issues exist regarding this company.

New matters

Two new matters have arisen since the 12/8/23 Report. On Monday, December 11, 2023, Class Counsel received a call from a class member concerned about a solicitation received via Instagram. This was the first time a report came in regarding that social media platform. Class Counsel followed up and discovered two companies that were engaging in soliciting merchants via Instagram whose marketing materials lacked the required disclaimers and contained false and/or misleading information. Class Counsel sent emails to both entities on December 11, 2023 and followed-up on December 12, 2023. Overnight mail was also sent to the addresses believed to be associated with the companies. Additional efforts regarding these two companies are detailed below.

Serendipity Asset Recovery Group, LLC

The first company, Serendipity Asset Recovery Group, LLC (“Serendipity”) appears to have copied wholesale the website and contract agreement from a law firm that is offering claims filing services. On December 12, 2023, Class Counsel again visited the website for the company and on that date there was a video on the site that was previously available on Instagram and contained misleading statements. On December 13, 2023, Class Counsel was contacted by counsel for Serendipity. Serendipity’s counsel stated that the website had been taken down to be corrected and that the Instagram account no longer has posts. Both were checked by Class Counsel. Counsel for Serendipity agreed to have Serendipity send corrective disclosures to any merchants that may have received misleading marketing materials and will allow any merchant to cancel their contract. On December 14, 2023, Counsel for Serendipity reported that changes had been made to the website to bring it into compliance. Some additional issues were pointed out by Class Counsel and Serendipity agreed to make those changes. This morning Class Counsel received a draft corrective disclosure. Numerous edits were suggested by Class Counsel and it is expected counsel for Serendipity will implement those edits and send out the corrective disclosure right away. Counsel confirmed all suggested edits will be made.

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**visa_mc_settlement – Barnett & Associates, LLC
(referral partner of Charge Card Settlement)**

On December 11, 12, and 13, 2023, Class Counsel attempted to contact an entity that appeared connected to Charge Card Settlement (“CCS”). Attempts were made via email and then via overnight mail to contact them. CCS’s website has been generally compliant with the Court’s orders, but the Instagram account that was just discovered, https://www.instagram.com/visa_mc_settlement/, failed to include the required disclaimers and contained false and/or misleading information. On the evening of December 13, 2023, Class Counsel received emails from the person running the Instagram account. They committed to correcting all misstatements. A conference call was held the evening of December 14, 2023 where it was learned that Barnett & Associates, LLC (“Barnett & Associates”) was a referral partner of CCS. The Barnett & Associates representative stated that he was removing all Instagram and other marketing materials. Class Counsel stressed that only truthful and accurate information should be posted and directed that a corrective notice issue. Class Counsel has scheduled a conference call with CCS for next week to make clear that companies partnering with other entities have a duty to make sure their agents are complying with the Court’s orders regarding third parties.

Respectfully submitted,

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cc: All Counsel via ECF